

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5952 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMCHAND CHELLARAM PANIA

Versus

UNION OF INDIA

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Appearance:

MR RA MISHRA for Petitioner

MR HL JANI for Respondent No. 2 & 3

None present for Respondent No. 1

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/03/97

ORAL JUDGMENT

The petitioners, two in number, filed this Special Civil Application and prayer has been made for direction to the respondents to dispose of the evacuee property, F.P. No.233 and 234 of T.P.S. 22 (Paldi) Ahmedabad, as per the provisions contained in Displaced Persons (Compensation & Rehabilitation) Act, 1954, (hereinafter referred to as the 'Act 1954'), and the

Ruled framed thereunder, and to further direct the respondents to consider and dispose of the application of the petitioners for demanding the open land of F.P. No.233 and 234 of T.P.S. No.22 (Paldi), Ahmedabad, as per the directions contained in the Circular dated 20.6.78 and for further declaration that the petitioners are the only persons eligible for grant of the said land.

2. The facts of the case, in brief, are that the petitioners are displaced persons from Sindh (West Pakistan) and are residing at Ahmedabad since their migration. The petitioners are residing in rented houses since 1951 in Muslim Society, near Jawahar Nagar, Ahmedabad. As they have no residential property of their own, either in their name or in the name of family members, they are in need of a piece of land for construction of houses for their bonafide and personal residence in Ahmedabad. The evacuee property, open land, near the petitioners' house bearing Final Plot No.233 and 244 of T.P.Scheme No.22 (Paldi) is there and the same vests with the respondents as evacuee property under the Act 1954. As per the provisions contained in the Act 1954, the said land (evacuee property) form part of compensation pool and the same is to be disposed of and to be effectively utilised for rehabilitation of displaced persons, migrated from Pakistan. That property, as per the case of the petitioners, is to be disposed of by the Chief Settlement Commissioner as per the provisions of Section 20 of the Act 1954 and the rules framed thereunder. The powers vested on the Chief Settlement Commission under Rule 87 of the Rules framed under the Act 1954 have been delegated to the Government of Gujarat under its Notification dated 11.11.75. In exercise of these powers, the State of Gujarat, through Revenue Department, issued directions under Rule 87 for disposal of evacuee property in Gujarat State which was undisposed of on 1.11.71. The petitioners, alongwith other community members submitted an application through the first petitioner to the Deputy Custodian of evacuee properties, Ahmedabad on 24.6.82 praying for allotment of land on sale, as what they stated was that they fulfilled the conditions prescribed for sale of undisposed evacuee properties. In connection with the aforesaid demand of the petitioners, the Circle Inspector recorded the statement of the applicants including the petitioners on or about 23rd September 1982. The petitioners were called upon to furnish further information, which they furnished. The Circle Inspector has also submitted record of statement of the applicants and the papers with necessary remarks to the concerned authority. It is grievance of the petitioners that the respondent No.3, at

the instance of some interested persons, had made an attempt to allot the evacuee property in question to the association of some non displaced persons at a nominal price, contrary to the provisions of the Act 1954 and the directions issued under Rule 87 of the said Rules. This action of respondent No.3 was challenged by petitioners by filing Civil Suit No.2605 of 1983. In the reply affidavit, filed in the said suit, the respondent No.3 has admitted that the property in issue is an evacuee property which has to be disposed of in accordance with Government Circular dated 20th June 1978. Further statement has been made that this property is not sold or transferred or assigned to any displaced or non displaced person. It has further been averred that the applications demanding the property in question are submitted to the Government for consideration. In view of the aforesaid affidavit of respondent No.3, the petitioners withdrew civil suit on 31st January 1984. After dismissal of that suit, the petitioners were not called upon by respondent No.2 and 3 and no further inquiry has been made in respect of petitioners' demand. However, the petitioners learnt that the Minister of the concerned Department has issued administrative instructions contrary to the Act 1954 and the Rules framed thereunder, to keep the disposal of the evacuee property pending for allotment of the same to any non displaced person or association. It is case of the petitioners that on the basis of aforesaid administrative instructions, their applications have been rejected and they have been accordingly informed by letter dated 9th August 1984, of the Deputy Custodian of the evacuee property, Ahmedabad. Hence this Special Civil Application.

3. This writ petition has been admitted by this Court on 25th June 1985 and interim relief has been granted directing the respondents not to dispose of 800 sq.yds. of land. The respondent, District Collector, Ahmedabad, has filed reply to the Special Civil Application, in which it has been given out that the land in dispute were required by the Government itself for its requirement. A decision to reserve this land for allotment to Government office has been taken and as such, the petitioners' request for allotment of the same cannot be accepted. It has next been contended that three persons have approached to the City Civil Court by filing suits which have been dismissed either as withdrawn or on merits. It has further been contended that the Central Government has issued instructions as per communication dated 15th July 1983 against the State Government prohibiting distribution of these and other

type of lands. In para-10 of the reply, reference has been made to the letter of the Government to show and establish that the land in dispute is decided to be kept for use of the Government and its offices.

4. One of the contentions of the learned counsel for the petitioners is that the order impugned in this Special Civil Application has been made without giving notice to the petitioner. The learned counsel for the respondents does not dispute that the order impugned has been passed without giving any notice or opportunity of hearing to the petitioner. However, the learned counsel for the respondents contended that the land has been decided to be kept reserve for use of the Government and its offices, the suits filed by petitioners and other persons have been dismissed and lastly, the Central Government has given direction not to dispose of these lands, and as such the petitioners have not case.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The suit has been filed by the petitioners earlier when the respondents have decided to allot this land to non displaced persons. That suit has been withdrawn as the petitioners hoped that the respondents will decide their claim of allotment of land on merits. This Court has also protected the petitioners by way of grant of interim relief. Though that was only interim relief granted and nothing finally has been decided by this Court, but the effect of that order dated 25th June 1985, was that this land is lying unused for all these years.

7. In view of the facts discussed above, the order annexure 'K' deserves to be set aside only on the ground that the same has been made in violation of principles of natural justice. However, nothing is being decided by this Court regarding entitlement or eligibility of the petitioners and their associates for allotment of the land in dispute, as displaced persons. The respondent No.2 is directed to decide the matter afresh after giving notice and opportunity of hearing to the petitioners. However, while deciding this matter, the respondent No.2 shall take into consideration the fact that the land has been decided to be kept reserve for Government and its offices, the three suits filed by different persons have been dismissed, the letter of the Government wherein it was stated that such lands were not required to be allotted to such displaced persons, as well as vital question whether the petitioners and their associates

still are in need of residential houses. Setting aside of the order annexure 'K' may not be taken as if this Court has expressed any opinion on the merits of the matter. The order of interim relief granted by this Court will not have any effect on the merits of the matter. The respondent No.2 has to decide the matter afresh in accordance with law. In case ultimately the respondent No.2 decides to allot the land to the petitioners on sale, then it may undertake further exercise as to whether the petitioners and their associates are the bonafide displaced persons or not and further to ascertain whether the petitioners or either of their spouse or dependents have constructed their own houses or not. In case the claim of the petitioners is not accepted for allotment of land by sale, a reasoned order has to be passed and a copy of the same may be sent to the petitioners by registered post. The Special Civil Application is disposed of in aforesaid terms. Rule stands disposed of accordingly. No order as to costs.

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